

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

CONSTANCE SWANSTON AND	§	
WOMEN'S ELEVATED SOBER LIVING,	§	
LLC, AND SHANNON JONES	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 4:19-CV-00412-ALM
	§	
CITY OF PLANO, TEXAS AND	§	
CITY OF PLANO BOARD OF	§	
ADJUSTMENT	§	
Defendants.	§	
	§	

**DEFENDANTS' UNOPPOSED MOTION TO OFFER TESTIMONY BY
CONTEMPORANEOUS TRANSMISSION**

1. Pursuant to Fed. R. Civ. P. 43, Defendants, the City of Plano, Texas and its Board of Adjustment, file this Unopposed Motion to Offer Testimony by Contemporaneous Transmission as follows:
2. Robert Miller (“Mr. Miller”) is listed as a witness who may be called by both Plaintiffs and by Defendants to testify at trial on this matter. [Dkt. 75-4; 75-5]. Mr. Miller does not wish to testify in person because of concerns about the Novel Coronavirus. Mr. Miller is 68 years old, placing him in the high-risk category with regard to COVID-19. Plaintiffs do not object to Mr. Miller testifying by contemporaneous transmission.
3. Patricia Morgan (Ms. Morgan) is listed as a witness who may be called by both Plaintiffs and by Defendants to testify at trial on this matter. [Dkt. 75-4; 75-5]. Ms. Morgan does not wish to testify in person because of concerns about the Novel Coronavirus. Ms. Morgan is 70 years old, and has asthma, placing her in the high-risk category with regard to COVID-19. Plaintiffs do not object to Ms. Morgan testifying by contemporaneous transmission.

4. "For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location." Fed. R. Civ. P. 43 (a). Mr. Miller's and Ms. Morgan's concerns about the transmission of the Novel Coronavirus are good cause to permit them to testify by contemporaneous electronic transmission. The safeguards in place are well-known to this Court, having conducted numerous hearings via video application due to the pandemic.

REQUESTED RELIEF

6. Defendants respectfully request that, if either party chooses to call Mr. Miller or Ms. Morgan as witnesses at trial, that Mr. Miller and Ms. Morgan be permitted to testify via contemporaneous electronic transmission. Defendants' counsel will coordinate with Court staff to implement the Court's preferred method of testimony with the appropriate safeguards recommended by the Court.

Respectfully submitted,

**ABERNATHY, ROEDER, BOYD &
HULLETT, P.C.**

/s/ Charles J. Crawford
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF CONFERENCE

I certify that I conferreded with counsel for Plaintiffs, and that Plaintiffs are not opposed to the relief requested in this Motion.

/s/ Lucas C. Henry
Lucas C. Henry

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on all counsel of record on January 29, 2021.

/s/ Charles J. Crawford
Charles Crawford